

(UNCLASSIFIED)

INFORMATION PAPER

MCJA-OSC
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SUBJECT: Department of Defense Physical Disability Board of Review

1. Purpose: To provide information about the Physical Disability Board of Review.

2. Facts:

a. The Physical Disability Board of Review (PDBR) was legislated by Congress in 2008, and implemented by the Department of Defense (DoD) in 2009. The PDBR evaluates and reviews cases for all services (Army, Air Force, Navy, Marines and Coast Guard) and their respective components (Regular, Reserve and Guard). The purpose of the PDBR is to ensure that Service Members, who were discharged between September 11, 2001 and December 31, 2009 with a combined disability rating of 20% or less, received accurate and fair outcomes. DoD guidance is in DoD Instruction 6040.44.

b. The PDBR uses medical information provided by the Military Department and Department of Veterans Affairs (VA) to review each case. Once a review is complete, the PDBR forwards its recommendation to the Secretary of the respective branch of the Armed Forces. In more than 50% of the cases reviewed by the PDBR (as of May 2011) the applicant was awarded a permanent disability retirement with retroactive benefits.

3. Evaluation Process:

a. Former Service Members may have his/her case reviewed by the PDBR if:

(1) They were separated from the Armed Forces between September 11, 2001, and December 31, 2009, due to unfitness for resulting from a physical disability;

(2) Received a combined disability rating of 20% or less from the DoD; and

(3) Were not found to be otherwise eligible for retirement.

b. Review by the PDBR may be initiated upon written request of the former Service Member, surviving spouse, next of kin, or legal representative using a DD Form 294. The PDBR may also review the findings and decisions of the Physical Evaluation Board (PEB) on its own initiative. If it does so, the PDBR will obtain the consent from the Service Member, surviving spouse, next of kin, or legal representative, before proceeding with the review.

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c. The PDBR will review the Physical Evaluation Board's (PEB) findings and rating decisions regarding the specific military unfitting medical conditions. The review shall be based on medical and disability evaluation documentation from the VA and the Veteran's Military Department. A witness may present evidence to the PDBR by affidavit, written statement or any other means deemed acceptable.

d. The PDBR uses the VA Schedule for Rating Disabilities (VASRD), applicable interpretations of the VASRD, applicable statutes, and any directives in effect at the time of the contested separation to arrive at its recommendations. Provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication.

e. The PDBR can recommend an increase in the disability rating, and/or that a previously held "fit" determination by the PEB is changed to an "unfit" determination. The PDBR can also assign a new disability rating, or recommend no change in ratings. However, no reduction of the previously issued combined disability rating will result because of this review.

f. The Secretary of the concerned Armed Forces branch shall accept or reject, in whole or in part, the recommendation of the PDBR, and notify the former Service Member of its decision. If the recommendation is accepted, the notification to the Service Member will include the change, and the effective date of the recommendation. In those cases where a record change is warranted, and results in an increase of ratings and/or retirement, the Secretary concerned will notify the VA of the change.

4. If the former Soldier requests review by the PDBR, they may NOT subsequently appeal to the Army Board for Correction of Military Records (ABCMR) on the same issues. There are important distinctions between the PDBR and ABCMR reviews. It is advisable to consult with counsel prior to initiating review by either agency.

5. More information about the PDBR and the appeal process can be found at: www.health.mil/pdbr.

6. This Information Paper is provided as a service to Soldiers in the MEB/PEB process, and is intended as general information only. A Soldiers' Counsel is available to provide specific legal advice to Soldiers involved in the MEB/PEB process. Contact your local Office of Soldiers' Counsel for more information. If you don't know how to reach your local OSC office please contact you PEBLO or see our website for contact information at <https://www.jagcnet.army.mil/otjagosc>.

Approved by: Ms. Joyce A. Hamel

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